

Appl. No. 09/687,151  
Amtd. dated August 9, 2004  
Reply to Office Action of May 7, 2004

PATENT

### REMARKS/ARGUMENTS

#### Amendments

The specification is amended to correct the cross-reference to related applications section. Additionally, the claims are modified in the amendment. More specifically, claims 1, 9 and 14 have been amended; no claims have been cancelled; and new claims 21-23 have been added. Therefore, claims 1-23 are present for examination. No new matter is added by these amendments. Applicant respectfully requests reconsideration of this application as amended.

#### 35 U.S.C. §102 Rejection, Garfinkle

The Office Action has rejected claims 1-3, 5, 8-17 and 20 under 35 U.S.C. §102(b) as being anticipated by the cited portions of U.S. Patent No. 5,530,754 to Garfinkle (hereinafter "Garfinkle"). Further, the Office Action has rejected claims 4, 6-7 and 18-19 under 35 U.S.C. §103(a) as being unpatentable over Garfinkle by reliance on Official Notice. Independent claims 1, 9 and 14 are amended above. Applicants believe the amended claims are not taught or suggested by Garfinkle. More specifically, Garfinkle fails to teach or suggest that: (1) "the first portion is at least one eighth of the program" as required by claim 1; (2) "the first segment is at least fifteen minutes in playback length" as required by claim 9; or (3) the first and second portions are transmitted with different media as required by claim 14. Reconsideration is respectfully requested.

The limitation added to claim 1 requires 1/8 of the program be pre-stored. Garfinkle contemplates that "a lead-in segment may be on the order of two minutes long." Garfinkle, col. 4, lines 19-22. Video on demand programs certainly less than 30 minutes in length and Garfinkle doesn't contemplate anything like that. This conjured scenario results in a 1/15 ratio. For a hour and a half movie this ratio would be 1/45. In one embodiment of the invention shown in figure 9A, a two minute pre-stored first portion would require a two-hour NVOD program be simultaneously played on sixty different channels. Clearly, having 1/8 pre-stored has advantages over Garfinkle's teachings. A similar argument can be made to pre-storing at least 15 minutes of the program as required by claim 9.

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Claim 14 requires that the first and second portions be sent with different media, where one is a multicast media and the other is a singlecast media. In one embodiment, this would allow reception of the pre-stored portion with a TV channel and getting the remainder from a broadband network connection. Garfinkle only contemplates a single datalink 16 that is the same for the two portions. *Id.*, col. 2, lines 58-60. Switching allows using a multicast media for the pre-stored portion and a singlecast media for the remaining portion, or vice versa.

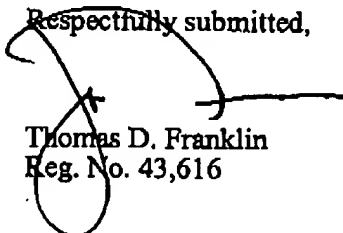
Reconsideration of the amended claims is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

  
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